IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

THE UNITED STATES, Petitioner, *v.* STONE & DOWNER CO., *et al.*	No. 558.

BRIEF FOR RESPONDENTS IN OPPOSITION TO GRANTING A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS.

Opinions in the Court Below.

The opinion of the Court of Customs Appeals in this case is printed in the record (R., 412-418) also reported in Treasury Decision No. 40784.

The opinion of the same Court in an earlier suit (No. 2245), involving the same questions between the same parties is reported in *Stone & Downer* v. *United States*, 45 Treas. Dec., 167; T. D. 40019. [Also printed in Appendix hereto, pp. 47-75.]

Statutes Involved.

Section 195 of the Judicial Code, as amended August 22, 1914, c. 267, 38 Stat., 703, under which the petitioner

has filed the present petition is printed at page 45 of the Appendix hereto.

Paragraphs 18 and 19 of the Emergency Tariff Act of May 27, 1921 (42 Stat., 9, 10) and paragraph 650 of the Tariff Act of October 3, 1913 (38 Stat., 114, 164) are printed at pages 4 and 5 of the petition and at pages 16, 17 of the Appendix hereto.

Statement

The judgment of the United States Court of Customs Appeals which the above named petitioner prays to have reviewed by this Court on writ of certiorari, did not decide a new question. An earlier case involving the same parties, the same questions and importations of precisely similar merchandise, was decided adverse to the Government in an unanimous decision by the Court of Customs Appeals on November 17, 1923 in Suit 2245.

(*Stone & Downer* v. *United States*, 45 Treasury Decisions, 167; T. D. 40019.)

The certificate of importance authorized by Section 195, of the Judicial Code, as amended (38 Stat., 703), was not filed by the Attorney General in the earlier case, and no application was there made for a writ of certiorari.

At the trial of the present case it was agreed between counsel that the record in the earlier case (Suit 2245) including the exhibits, should be made part of the present record. The record and exhibits were accordingly admitted (R., 23, 412) and the earlier record is reprinted in the present record (R., 97-405).

It was also agreed between counsel that the wool, yarn and cloth covered by the present case is in every essential

and material respect the same as Exhibits 1 to 12, 14 and 15 passed upon in the earlier case (R., 23, 412).

Petitioner, at page 7 of his brief in support of the petition, refers briefly to the earlier case decided in Suit 2245.

Respondent feels that a more complete statement of the case should be made than is contained in the petition and brief in support thereof, and accordingly sets forth, somewhat in detail, the following history of the present litigation as shown in the record:

Paragraph 650 of the Tariff Act of 1913 (38 Stat., 164) placed upon the free list all "wool of the sheep." Manufactures of wool, however, were classified for duty according to the nature of the articles.

On May 27th, 1921, Congress passed the Emergency Tariff Act (42 Stat., 9).

The Emergency Tariff Act did not repeal the Tariff Act of 1913. It merely modified it *pro tempore* in certain particulars only, leaving in full effect the unchanged provisions of the earlier act.

> *United States* v. *Davies* (11 Ct. Cust. Appls., 392. 396).

The latter assertion is not disputed in the present litigation.

Paragraph 18 of the Emergency Act (42 Stat., 10) modified paragraph 650 of the Act of 1913 by placing a temporary duty on one class of sheep's wool, namely "wool commonly known as clothing wool," leaving all other classes of sheep's wool free under the general provision in paragraph 650 of the 1913 act for "wool of the sheep."

Paragraph 19 of the Emergency Act (42 Stat., 10) placed temporary duties (in addition to those specified in the

Act of 1913) on manufactures in chief value of the wool named in paragraph 18, that is, manufactures composed in chief value of clothing wool.

Paragraphs 18 and 19 also placed duties on the hair of various named animals, other than sheep, and manufactures thereof, but the present litigation deals only with wool of the sheep and manufactures of such wool.

On September 21, 1922, the Act of 1913 and the Emergency Tariff Act were both repealed by Sec. 643 of the Tariff Act of 1922 (42 Stat., 858, 990). The Act of 1922 contains no provision that could be affected by the determination of the present question.

When the Emergency Act was passed, the Collector of Customs at the port of Boston classified importations of certain long staple wool known as combing wool in paragraph 18 of the Emergency Act in the provision for "wool, commonly known as clothing wool."

He also assessed the additional duties prescribed in paragraph 19 on manufactures of combing wool.

Certain importers, including the present respondents, filed protests against the Collector's action in the case of each entry, claiming that the Collector erred in applying the provisions of paragraphs 18 and 19 of the Emergency Act to the wool and manufactures in question, and claimed further that the wool was entitled to free entry under paragraph 650 of the Act of 1913, and that the manufactures were subject only to the duties prescribed in the Act of 1913.

In accordance with the provisions of the Customs Administrative Act then in force (paragraph N, Section III, Act of 1913 [38 Stat., 114, 187]), the protests were forwarded to the Board of United States General Appraisers for hearing.

A large number of protests were called for hearing before the Board on September 21, 1922 (R., 122). By agreement between counsel, seven protests covering importations of wool, cloth and yarn were selected to make a test case (R., 123). The protests selected were those of Stone & Downer Co., Lowe, Donald & Co., John A. Conkey and J. A. Karnheim (R., 122). Samples of the wool, cloth and yarn were introduced and numbered Exhibits 1 to 15 (R., 124-128).

The proceedings before the Board of General Appraisers lasted five days. Nineteen witnesses were examined, among whom were purchasers, sellers, appraisers, sorters, importers, exporters, and classifiers of wool. Eight of these witnesses were called by the protestants and eleven by the Government. Their testimony is in the present record (R., 126-374).

The Board of General Appraisers, on February 20, 1923 (McClelland, G. A. dissenting), overruled the protests and sustained the Collector's classification (R., 374-405).

Thereafter the protestants in accordance with the provisions of Section 198 of the Judicial Code (36 Stat. 1146) appealed from the Board's decision to the Court of Customs Appeals, in Suit No. 2245 (R., 97, 98, 99).

The Court of Customs Appeals on November 17, 1923, in an unanimous decision of its five judges reversed the decision of the Board of General Appraisers and sustained protestants' claims.

The Court in its opinion, speaking through Judge Bland, held specifically that "clothing wool does not embrace combing wool. Combing wool, and products made therefrom, are the goods in controversy. Combing wool, on the date of entry, was on the free list of the Act of 1913. The

protests should have been sustained. The judgment of the Board of General Appraisers is *reversed.*"

(*Stone & Downer* v. *United States,* Suit 2245, 45 Treas. Dec., 167, 183.) (Also Appendix hereto, p. 75.)

Thereafter the Government petitioned the Court of Customs Appeals for a rehearing. One of the grounds urged for the rehearing was that the Court's decision reversing the Board, included Exhibit 13, one of the samples of wool, although the great preponderance of evidence was to the effect that that particular exhibit was a "clothing wool" rather than a "combing wool," and that the importers had so conceded in their brief.

In replying to this particular ground for rehearing, the importers conceded that Exhibit 13 was a clothing wool but took the position that the opinion did not hold to the contrary.

The Court denied the petition for a rehearing and through Judge Bland wrote a short opinion in which it was pointed out that while the original opinion was sufficiently clear to indicate how Exhibit 13 should be classified, but to obviate any doubt, specifically found that Exhibit 13 was in fact clothing wool and modified the original judgment by specifically affirming the Board of General Appraisers as to the merchandise represented by Exhibit 13. The original judgment was affirmed as to the merchandise represented by Exhibits 1 to 12, 14 and 15 (45 Treas. Dec., 183). (Appendix hereto, p. 75.)

The certificate of importance provided for in Section 195 of the Judicial Code had not been filed and no petition for certiorari was made. The judgment of the Court of Customs Appeals therefore under the same section of

the Code became final and in due course was made effective.

In order to avoid confusion we shall hereafter refer to the above case as Suit 2245.

After Suit 2245 was decided by the Court of Customs Appeals, two of the parties, namely Stone & Downer Co. and Lowe, Donald & Co., on May 28, 1924, submitted to the Board of General Appraisers, five protests covering subsequent importations of the same character of merchandise as that passed upon in Suit 2245 (R., 22). These protests had been on the suspended files of the Board awaiting the outcome of Suit 2245.

It should be noted here that the only instrument in the nature of a pleading permitted by the customs procedure is the document known as the protest. The present protests could not be amended so as to formally plead the decision in Suit 2245. The Tariff Act of 1922, Sec. 514 (42 Stat., 858, 970), permitting amendments to protests is not applicable to protests covering importations made prior to September 21, 1922 (*Woolworth* v. *United States*, 12 Ct. Cust. Appls., ; T. D. 41037).

When the five protests were called, however, it was agreed between counsel that the record in Suit 2245 should be made part of the record and that the Exhibits 1 to 12, 14 and 15 in Suit 2245, should be accepted as representing the merchandise in the importations covered by the five protests in question (R., 23).

The identity of the merchandise with that in the earlier case was conceded by Government counsel in the following statement by Mr. Lawrence, special attorney for the United States (R., 23):

> "Mr. Lawrence: That is agreed to, we having submitted the invoices to the appraiser at Boston,

who confirms the identity of the merchandise under protest with that in Suit 2245."

The record in Suit 2245 was accepted in evidence and marked Exhibit I. It is printed in the present record (R., 97-405).

The importers rested upon the record so made (R., 23).

The Government then introduced the testimony of five witnesses who had not testified in Suit 2245. The importers introduced the testimony of one witness in rebuttal. The testimony of these witnesses is printed in the present record (R., 24-97).

The Board of General Appraisers on September 10, 1924, in an unanimous decision, sustained the protests on the authority of the decision of the Court of Customs Appeals in Suit 2245. The Board wrote three short concurring opinions in which it was held that the issue was identical with that decided in Suit 2245, and that the additional testimony did not "change the facts" (R., 406-410).

Thereafter the Secretary of the Treasury, by virtue of the authority conferred upon him by Section 198 of the Judicial Code, adopted March 3, 1911, applied to the Court of Customs Appeals for a review of the Board's decision. The application is printed in the record (R., 1).

Thereafter, on December 23, 1924, the Attorney General filed a certificate under Section 195 of the Judicial Code, that the case was of such importance as to render expedient its review by the Supreme Court of the United States (R., 411).

Thereafter, on March 23, 1925, the Court of Customs Appeals in an unanimous decision of its five judges, one

of whom was not a member of the Court when the earlier case was decided, affirmed the judgment of the Board of General Appraisers, on the authority of the earlier Stone & Downer case, Suit 2215, (R., 112-117).

In its opinion, speaking through Judge Bland, the Court held that

> "Exactly the same questions are here involved as were before the Court in the Stone & Downer case, *supra*" (R., 112).

In referring to the additional testimony introduced before the Board, the opinion held that it threw no new light on the case but confirmed the views expressed in the former opinion (R., 112).

In June, 1925, the Solicitor General of the United States filed the present petition to this Court praying that a writ of certiorari issue to review the judgment of the United States Court of Customs Appeals rendered March 23, 1925.

It might be well to note here that while the case involves the classification of wool, yarn and cloth, yet as pointed out by petitioner at page 3 of the petition, the classification of the yarn and cloth depends automatically upon the classification of the wool.

The fundamental issue therefore before the Court of Customs Appeals in the present case and in the earlier case may be narrowed to the single question: Should the wool represented by Exhibits 1 to 12 be classified in Paragraph 18 of the Emergency Act as "wool, commonly known as clothing wool"?

The Court of Customs Appeals in two unanimous decisions, the first one decided nearly two years ago, has held that these same Exhibits, 1 to 12, are in fact "combing wool" and that "combing wool" and "clothing wool"

are separate, distinct and different classes of wool, and that "clothing wool" does not embrace "combing wool."

These conclusions were based upon the testimony of 25 experienced wool men from widely different branches of the wool industry, upon definitions in dictionaries and encyclopedias, upon official publications of the different departments of the Government, and upon distinctions contained in prior tariff acts.

Now, nearly two years after the very question was finally decided by the Appellate Court having exclusive appellate jurisdiction over this class of cases, more than three years after the provisions of law involved have been repealed, the Government seeks to obtain a review by this Court on certiorari of a second suit between the same parties and involving the same questions.

The respondents submit the following argument in opposition to the writ prayed for.

Summary of Respondent's Argument with Page References to the Argument.

The decision below followed an earlier unreversed and unmodified decision of the same Court between the same parties, in which the same questions were distinctly put in issue and directly determined. The questions must, therefore, as between the present parties, be taken as conclusively determined (pp. 17, 18).

> *United States* v. *Moser*, 266 U. S., 236 [ad. sheets];
> *Southern Pacific R. R. Co.* v. *United States*, 168 U. S., 1, 48;
> *New Orleans* v. *Citizens' Bank*, 167 U. S., 371;
> *Baldwin* v. *Maryland*, 179 U. S., 220, 222;
> *Deposit Bank* v. *Frankfort*, 191 U. S., 499, 513;
> *Citizens' Bank* v. *Parker*, 192 U. S., 73, 77;

Fayerweather v. *Ritch*, 195 U. S., 276, 301;
Gunter v. *Atlantic Coast Line*, 200 U. S., 273, 291;
Berryman v. *Whitman College*, 222 U. S., 334, 346.
Cromwell v. *County of Sac.*, 94 U. S., 351, 352-353.

The requirement in Section 195 of the Judicial Code (as amended August 22, 1914, c. 267, 38 Stat., 703), that the certificate of importance must be filed "before the decision of the Court of Customs Appeals is rendered" would be virtually nullified if this Court, by granting the writ in a second suit, should thus sanction a proceeding whereby the Government could, after an adverse decision, avoid the said requirement by filing the certificate and petition in a second suit involving the identical questions decided in the first suit (pp. 19-21).

The purpose of certiorari is not merely to give the defeated party another hearing (p. 21).

Magnum Co. v. *Coty*, 262 U. S., 159, 163.

Even in the absence of a technical estoppel, this case presents no reason for granting the application for writ of certiorari (p. 21).

Petitioner's assertion as to the amount of refunds involved in the present case and in cases dependent upon its outcome is based upon a misapprehension of the facts (pp. 22, 23).

Although the Court below has definitely held that the statute is clear and unambiguous, and although the petitioner himself, neither in his petition nor brief, has averred to the contrary, yet he seeks a construction and enlargement of the statute inconsistent with its plain terms and in the event of the writ being issued, frankly

proposes to submit to this Court the individual views and motives of members of Congress expressed in debate and in Committee meetings and other data gathered from legislative history which has repeatedly been held to be inadmissible for that purpose (pp. 23, 24).

Duplex Printing Press Co. v. *Deering*, 254 U. S., 443, 474;
Pennsylvania R. R. Co. v. *International Coal Mining Co.*, 230 U. S., 184, 199;
McKenzie v. *Hare*, 239 U. S., 299, 308.

Petitioner's contention, as expressed at page 17 of his brief, that the assessment of the tax on clothing wool and not on combing wool would constitute a discrimination against the growers of combing wool in favor of the growers of clothing wool, even if correct as to the facts, would not justify the Court in interpolating the words "combing wool" into the statute (pp. 25, 29).

Chung Fook v. *White*, 264 U. S., 443.

The Court is not concerned with reasons for a distinction in a tariff act; it is enough that Congress made it (p. 30).

United States v. *Citroen*, 223 U. S., 407, 415.

The political motives which induce the Legislature to select objects of revenue and tax them under particular circumstances are not for judicial consideration (pp. 30, 31).

Pennington v. *Coxe*, 2 Cranch., 33, 59.

The wording of the law cannot be changed to give effect to the law which may be supposed to have been designed by the Legislature. It is not for the Court to

say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions (p. 31).

Bates Refrigerating Co. v. *Sultzburger*, 157 U. S., 1, 37.

In the interpretation of taxing statutes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specially pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the taxpayer (pp. 31, 33).

Gould v. *Gould*, 245 U. S., 151, 153;
United States v. *Merriam*, 263 U. S., 179, 187, 188;
Eidman v. *Martinez*, 184 U. S., 578, 583.

Even if the present question were one of doubt, the doubt would be resolved in favor of the importer, "as duties are never imposed on the citizen upon vague or doubtful interpretations" (p. 33).

American Net & Twine Co. v. *Worthington*, 141 U. S., 468;
Benziger v. *United States*, 192 U. S., 38, 55;
Hartranft v. *Wiegmann*, 121 U. S., 609, 616.

In reaching its conclusions in Suit 2245 and in the present suit, the Court of Customs Appeals proceeded according to the well-established rules governing the tariff classification of imported merchandise. Its decision was right (p. 33).

The Court of Customs Appeals accepted the normal, ordinary meaning of the term "clothing wool" as defined

in the dictionaries, encyclopedias and publications of the federal government including the Tariff Commission and the Department of Agriculture. The Court gave due consideration to the use of the term in prior tariff acts and to the use and understanding of the term by the witnesses, all of whom had wide experience either as purchasers, sellers, appraisers, sorters, importers, exporters or classifiers. All these sources united in one common meaning for the term "clothing wool." All excluded "combing wool" from the scope and meaning of the term. There was no competition between a common meaning and a commercial meaning; both were found to be the same; which merely established as a fact what had already existed as a presumption (pp. 24, 34, 35).

The language of a tariff act will be presumed to have the same meaning in commerce that it has in ordinary use, unless the contrary is shown (p. 37).

Swan v. *Arthur*, 103 U. S., 597.

While the Court did not rely solely upon the definition of the term "clothing wool" as understood by commercial witnesses, yet there was ample authority for the Court to give due consideration to the testimony of such witnesses.

The words of a tariff act are to be taken in the sense in which they will be naturally understood by those to whom they are addressed (p. 38).

Hedden v. *Richards*, 149 U. S., 346, 349.

Laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce (p. 38).

Elliott v. *Swartwout*, 35 U. S. (10 Pet.), 137, 151.

The object of duty laws is to raise revenue, and for

this purpose, to class substances according to the general usage and known denomination of trade (p. 38).

Re Two hundred chests of Tea, 9 Wheat, 438.

In view of the commonly accepted use and meaning for the term "clothing wool," the Court could not do otherwise than hold that the provision for "wool, commonly known as clothing wool" was clear and unambiguous.

The fact that the term was clearly defined in official publications of the federal government not intended for scholars or scientific men but to give to Congress and to the people the best knowledge the compilers can would in itself remove any doubt as to what Congress understood to be the scope and meaning of the term,—a scope and meaning which is fully verified by the definitions of the lexicographers (pp. 24-25, 35-36).

United States v. *Buffalo Natural Gas Fuel Co.*, 78 Fed., 110, 112;

Merck v. *United States*, 6 Ct. Cust. Appls., 32, 34, 35.

None of the six words in the provision is new to tariff legislation. The words "commonly known as" have appeared in former tariff acts in connection with other commodities and have not required a resort to construction nor a departure from the meaning given to the term in connection with which the phrase was used, by members of the trade (p. 39).

Tiffany v. *United States*, 131 Fed., 398.

The synonymous phrase "usually known" has been used in six prior tariff acts in connection with combing wool and this Court has held that the provision was clear and

unambiguous and that no wools except combing wools were included therein (pp. 39, 41).

Cooper v. *Dobson*, 157 U. S., 148, 153.

Petitioner has attempted to create impressive issues of statutory construction that have no bearing upon the real question at issue. The sole question here is whether the wool at bar should be classified as wool, commonly known as clothing wool,—an ordinary customs case,—with the usual issue (p. 42).

Most of the cases where writs have been issued to the Court of Customs Appeals have had nothing to do with the classification of merchandise but have involved treaty, jurisdictional and other important questions (p. 43).

The Five Per Cent. Discount Cases, 243 U. S., 97;
Nicholas v. *United States*, 249 U. S., 34;
Vitelli v. *United States*, 250 U. S., 355;
United States v. *Aetna Explosives Co.*, 256 U. S., 402;
United States v. *Rice*, 257 U. S., 536;
United States v. *Fish*, 266 U. S., 598 (ad sheets).

It was clearly not the purpose of the Judicial Code to have presented to this Court the question as to how a shipment of wool should be classified (p. 44).

In ordinary patent cases this Court has held that it would not grant applications for certiorari unless it be necessary to reconcile decisions of Circuit Courts of Appeals on the same patent.

Keller v. *Adams Campbell Co.*, 264 U. S., 314;
Layne Bowler Corp. v. *Western Well Works*, 261 U. S., 387.

ARGUMENT.

I.

The decision below followed an earlier unreversed and unmodified decision of the same Court in a suit between the same parties, in which the same questions were distinctly put in issue and directly determined. The question must, therefore, as between the present parties, be taken as conclusively determined.

United States v. *Moser*, 266 U. S., 236 (Advance Sheets Official Reports);
Southern Pacific R. R. Co. v. *United States*, 168 U. S., 1, 48;
New Orleans v. *Citizens' Bank*, 167 U. S., 371;
Baldwin v. *Maryland*, 179 U. S., 220, 222;
Deposit Bank v. *Frankfort*, 191 U. S., 499, 513;
Citizens' Bank v. *Parker*, 192 U. S., 73, 77;
Fayerweather v. *Ritch*, 195 U. S., 276, 301;
Gunter v. *Atlantic Coast Line*, 200 U. S., 273, 291;
Berryman v. *Whitman College*, 222 U. S., 334, 346.
Cromwell v. *County of Sac.*, 94 U. S., 351, 352-353.

The decision of the Court of Customs Appeals in Suit 2215 as to the questions there decided is conclusive between the same parties in a second suit concerning taxes subsequently assessed under the same statute, although the second suit involves a separate claim or cause of action.

New Orleans v. *Citizens' Bank, supra;*
Baldwin v. *Maryland, supra;*

Deposit Bank v. *Frankfort, supra;*
Citizens' Bank v. *Parker, supra;*
Gunter v. *Atlantic Coast Line, supra.*

The concurrent findings of the Court of Customs Appeals and the Board of General Appraisers in the present suit was to the effect that the additional testimony introduced in the present suit did not "change the facts" or throw any new light on the case (R., 408, 412).

The rule is well settled that findings of fact concurred in by two lower courts will not be disturbed by this Court, unless shown to be clearly erroneous.

Washington Securities Co. v. *United States,* 234 U. S., 76, 78;
International Navigation Co. v. *Farr & Bailey Mfg. Co.,* 181 U. S., 218, 224.

Additional testimony introduced in a second suit, which is merely cumulative, will not affect the conclusiveness of the decision in the earlier case where the parties and questions decided are the same. The application to consider that evidence is practically an application for a rehearing as to the things directly determined in the former suit.

Southern Pacific R. R. Co. v. *United States,* 168 U. S., 1, 65.

II.

The requirement in Section 195 of the Judicial Code, as amended August 22, 1914 (c. 267, 38 Stat. 703), that the certificate of importance must be filed "before the decision of the Court of Customs Appeals is rendered" would be virtually nullified if the petition should be granted in this second suit.

Section 195 of the Judicial Code as amended, provides three conditions under which a petition for certiorari may be filed. The first two conditions deal with cases in which there is drawn in question the construction of the constitution of the United States and treaties made pursuant thereto. The present case does not involve any constitutional or treaty question. The third condition, and the one invoked in the present proceeding, appears in the Code in the following language:

> "or in any other case when the Attorney General of the United States shall, before the decision of the Court of Customs Appeals is rendered, file with the Court a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court, * * *."

The clear purpose of the section is opposed to the filing of a certificate of importance and petition for certiorari after a question has been distinctly put in issue and directly determined in a prior suit. Manifestly this right of review was intended by Congress to be open impartially to the Government and the taxpayer. That is the plain purpose of requiring the preliminary certificate to be filed "before the decision of the Court of Customs Appeals is

rendered." and before either party could know the outcome. The whole purpose and principle of this provision would be virtually nullified if this Court, by granting the writ in a *second* suit, should sanction the practice here attempted, whereby the Government, after an adverse decision, could avoid and circumvent the requirement of the section by filing the certificate and petition in a second suit involving the identical questions decided in the first suit.

Owing to the nature of customs procedure, practically every case decided by the Court of Customs Appeals is a test case. Protests involving subsequent importations wherein the same questions are involved are invariably suspended in the files of the Board of General Appraisers to await the outcome in the test case. These suspended protests furnish the opportunity to file innumerable appeals to the Court of Customs Appeals, subject only to such limitations as may be included in the rules of *res adjudicata* and *stare decisis*.

If filing the certificate could be deferred until after the Court of Customs Appeals has announced its decision, by the mere expedient of appealing a suspended protest, then the time prescribed by the statute for filing the certificate and the time prescribed for filing the application for certiorari would be indefinitely enlarged.

If a decision adverse to the Government in the first suit should be regarded by the Attorney General as a controlling factor in determining whether the certificate should be filed, it would be obviously useless for a taxpayer to apply for a certificate in a second suit, where an earlier suit involving the same questions had been decided in favor of the Government. On the other hand, if the Attorney General should be entirely impartial in

the matter and should make it a practice to issue the certificate upon the request of the taxpayer in a second suit where the initial test case had been decided in favor of the Government, the adoption of such a policy would create an equally unfortunate condition. The natural result would be that neither side would, in future cases, seek a certificate until the Court of Customs Appeals had decided the initial case. Under such a practice no one would know when a decision of the Court of Customs Appeals could be accepted as final. Merchants and manufacturers, who necessarily adjust their prices according to the rates of duty charged upon imports, would never know when a rate of duty could be accepted as finally determined.

III.

The purpose of certiorari is not merely to give a defeated party another hearing.

The petitioner does not claim, either in his petition or brief, that there is any element of importance in the present suit that was not present, and equally well-known, prior to the decision of the Court of Customs Appeals in Suit 2245. The fact that the decision in Suit 2245 was adverse to the Government did not constitute a valid reason for appealing another suit to the Court of Customs Appeals for the obvious purpose of eventually obtaining a review in this Court by certiorari of the identical questions decided in Suit 2245.

The purpose of certiorari is not merely to give the defeated party another hearing.

Magnum Co. v. *Coty*, 262 U. S., 159, 163.

IV.

Even in the absence of a technical estoppel this case presents no reason for granting a writ of certiorari.

A. *Petitioner's assertion as to the amount of refunds involved in the present case and in cases dependent upon its outcome, is based upon a misapprehension of the facts.*

The petitioner stresses the point that because of the amount involved the case is of great public interest and of importance to the Treasury of the United States. We believe a complete answer to this contention is that most of the cases decided by the Court of Customs Appeals are of great importance to the Treasury of the United States and most of them are of great importance to the industries of the United States. The Court of Customs Appeals, however, was created to finally settle cases of great importance to the Treasury and to the public interests. Every time the Court of Customs Appeals determines the tariff classification of any staple commodity, such as wool, it necessarily determines a question of great importance. If the law under which the classification is made is in effect at the time of the Court's decision, the monetary importance is measured not only by the amount of assessments already made but also by such as would be made during the entire life of the Act in question. Measured in this way many of the decisions of the Court of Customs Appeals are of far more importance than the present one. In the present case we are dealing with a statute that was repealed in September, 1922, and which was on the statute books only about sixteen months. The case is of no importance whatever in so far as existing laws are concerned.

As indicating the unreliability of the figures specified by the petitioner we refer specifically to the first decision of the Court in the present issue, namely, *Stone & Downer Co., et al.* v. *United States* (Suit 2245) 45 Treas. Dec., 167. In that case the duties challenged by protests amounted to $202,908.30. After the entries were audited and reliquidated under the Court's decision, there was refunded to the importer the amount of $844.20. These figures are taken from the official liquidation by the Collector of Customs at the Port of Boston and may be readily verified by that official. The proceedings in said case are a part of the record in the present case. While the Collector's liquidation is not a part of the printed record, yet it constitutes the official act of the Collector pursuant to the decree of the Court.

We, of course, are unable to say that the same ratio exists between the duties claimed and the duties that might be eventually refunded in the case of the 4000 protests referred to by the petitioner. Yet it is the only case of an actual refund under the present issue and we believe it shows the utter unreliability of the figures stated by the petitioner in the present proceeding. The petitioner states that the amount of refunds involved in the present case is over $200,000. He does not state, however, nor do we believe that he would be willing to state, that $200,000 would be refunded to the importer under the decision of the Court of Customs Appeals.

An official estimate of the amount of duties challenged by protest in the 4000 protests referred to would not be even an approximate estimate of the refunds that would be made following the decision in the present case.

B. *The petitioner seeks a construction of the Statute inconsistent with its terms and should the writ be granted,*

frankly proposes to submit to this Court data gathered from the journals of Congress, which has repeatedly been held to be inadmissible for that purpose. The petition is wholly without merit.

In the opinion below and in the prior opinion in Suit 2245, the Court of Customs Appeals specifically held that the provision of law in question is not ambiguous (R., 414).

In clear language the tax is prescribed for and limited to "clothing wool."

The term "clothing wool" is not ambiguous. On the contrary as pointed out in the opinions below, it is defined in the dictionaries, encyclopedias and publications of the federal government. It is a term of general use and common understanding among those to whom the law is addressed,—men engaged in wool commerce and trade. The precise term has been repeatedly used in prior tariff acts.

All of these sources of information unite in one common meaning for the term—the meaning accepted by the Court of Customs Appeals. In every instance "combing wool" is specifically excluded from the meaning of the term.

That the wool at bar is "combing wool" is nowhere disputed nor indeed could it be, because the practically unanimous testimony establishes that fact beyond controversy.

The distinctions between "clothing wool" and "combing wool" all fully described in the Tariff Commission's report to Congress (1921) and in bulletins of the Department of Agriculture, quoted from in the opinion in Suit 2245 (45 Treas. Dec., 171, 172—Appendix herein pp. 54-56). These publications alone would remove any doubt

as to what Congress understood to be the scope and meaning of the term "clothing wool,"—a scope and meaning verified by the lexicographers.

That was the view taken by Judge Lacombe, speaking for the Circuit Court of Appeals, when confronted with a somewhat similar situation in *United States* v. *Buffalo Natural Gas Fuel Co.*, 78 Fed., 110, 112; see also *Merck* v. *United States*, 6 Ct. Cust. Appls., 32, 34, 35.

The clear purpose of the petition is to obtain a reargument of the contention that the taxing provision should be enlarged by construction so as to include "combing wool," in order to meet a supposed policy of Congress which petitioner alleges is revealed in the history of the times, committee reports, and in remarks made by individual members of Congress in committee hearings and in debates on the floor of the House and Senate.

At page 17 of his brief, petitioner insists that the above sources of information indicate the congressional intent to protect *"the large body of domestic wool producers"* and that the exemption of "combing wool" from the tax as claimed by the importers would defeat the purpose of the legislature *"as it would result in leaving the large body of domestic producers of wool of the combing grade unprotected, and at the same time protecting the small class of those producing wool of the clothing grade."*

At page 10 of his brief, petitioner insists that the intention of Congress, ascertained in the manner above indicated, should be followed *"even though the intent when ascertained may not be consistent with the strict letter of the statute."*

Neither the record nor any other source of information supports the contention that only a small class of domestic growers produce wool of the clothing grade. But how-

ever that may be, the petitioner's assertions merely admit the distinctions between the two classes of wool and emphasize the fact that the statute as written does not include "combing wool."

One very significant feature of the petition and brief is that nowhere is there a direct averment that the language of the statute is either ambiguous or obscure. On page 9 of the brief, the petitioner says that *"the title of the Act and its declared purpose would seem to suggest that if any doubt arises as to the meaning of its provisions, inquiry should lead into an examination of the history of the times,"* etc. An examination of the title, however, fails to reveal any such admission or directions.

Nowhere, however, in the petition or brief does the petitioner stand squarely upon the proposition that the words of the Act are ambiguous, yet under the clear rule of decision, that is a necessary condition precedent to the consideration of the data set forth in his brief, and which, presumably, he would submit to this Court should the writ be granted.

Even where the terms of an act are obscure or ambiguous, this Court has never authorized an indiscriminate search for intent through the journals of the legislature, such as petitioner resorts to in his brief and the appendix thereto. Most of the references in the brief are to statements made by individual members of Congress in debates or during committee hearings. In one of the very cases relied upon by the petitioner (Brief, p. 21) namely, *Duplex Printing Press Co.* v. *Deering*, 254 U. S., 443, 474, this Court speaking through Mr. Justice Pitney said:

> "By repeated decisions of this Court it has come to be well-established that the debates in Congress expressive of the views and motives of individual

> members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law making body."

In *Pennsylvania R. R. Co.*, v. *International Coal Mining Co.*, 230 U. S., 184, 199, it was said, in regard to reports of Committees:

> "While they may be looked at to explain doubtful expressions, not even formal reports—much less the language of a member of a committeee—can be resorted to for the purpose of construing a statute contrary to its plain terms, or to make identical that which is radically different."

There is nothing referred to in petitioner's brief to indicate that there was any legislative intention to include "combing wool" in the assessment, nor is there anything to indicate that Congress did not believe that an assessment on clothing wool, only, would properly meet the existing emergency and supply the necessary protection to the wool growing industry, or at least as much protection as the majority deemed it wise to ask for in a bill that was bitterly opposed in an almost equally divided Congress.

While the respondent has no reason to feel alarmed at the prospect of an inspection of any of the data referred to by the petitioner, yet, the data in question does not furnish any possible ground for a review of the conclusions of the Court below.

Petitioner seems to have adopted the view that the Court, rather than Congress, is the final arbiter of the character of legislation necessary to meet the emergency existing at the time the law was passed and to that end should first examine the history of the times, the reports of committees, arguments in the debates and discussions in committee hearings and, having reached a conclusion

as to the thing necessary to be done, should proceed to reform the law as passed so as to make it conform to what the Court might regard as a wiser determination of the questions of political economy debated and discussed in its legislative history.

Proceeding upon the above theory the petitioner has set forth in his brief a description of the financial and industrial emergency existing at the time the law was enacted, apparently with the view that the Court should study the emergency for the purpose of determining whether or not the law adequately met that emergency, and that the Court should compare the measure of protection given to producers of clothing wool and the measure of protection given to the producers of combing wool, and if it should be found, as petitioner alleges at page 17 of his brief, that an assessment of duty on clothing wool only would not properly meet the emergency and would leave the producers of combing wool without protection, that the Court should enlarge the provision so as to include combing wool in the enactment, although the inclusion of combing wool may not be consistent with the strict letter of the statute. This seems to be the thought petitioner had in mind on page 10 of his brief where he cites the case of the *Church of the Holy Trinity* v. *United States*, 143 U. S., 457, 459, in support of the assertion that the *"act should be interpreted according to the intention of the legislature * * * even though the intent when ascertained may not be consistent with the strict letter of the statute."*

In other words the petitioner proposes to contend in this Court that the language of the law, however clear, must give way to a construction that the Court might regard as better serving the reasons that induced its enactment.

The rule, however, as established by this Court is the other way around. It must be presumed that the assessment of duty on clothing wool met the emergency just as Congress intended that it should be met and provided the protection that Congress intended should be provided, and that an assessment of duty on "combing wool" was not deemed necessary or expedient in order to accomplish the purpose.

The rule was clearly stated by this Court in *McKenzie* v. *Hare*, 239 U. S., 299, 308, where Mr. Justice McKenna, speaking for this Court, said at page 308 of the opinion:

> "Whatever was said in the debates on the bill or in the reports concerning it, preceding its enactment or during its enactment, must give way to its language, or, rather, all the reasons that induced its enactment and all of its purposes must be supposed to be satisfied and expressed by its words, and it makes no difference that in discussion some may have given more prominence than others, seemed more urgent and insistent than others, presented the mischief intended to be remedied more conspicuously than others."

Furthermore the alleged discrimination against the growers of combing wool would not justify the interpolation of the term "combing wool" into the provision by the Court.

In *Chung Fook* v. *White*, 264 U. S., 443, this Court had before it a case involving an exceptional instance of discrimination. Section 22 of the Immigration Act of February 5th, 1917 (chapter 29, 39 Stat., 891) made an exception to the general prohibition against the entrance into the United States of aliens afflicted with dangerous contagious diseases. The exception was in the case of the

alien wife or child of a naturalized citizen, who might be admitted for hospital treatment. The provision, however, failed to mention native born citizens, so that according to its terms there was a definite discrimination against a native born citizen in favor of a naturalized citizen. This Court was asked to construe the law so as to include native born citizens. Speaking through Mr. Justice Sutherland, this Court took the view that it could not interpolate the words "native born citizen" without usurping the legislative function, and on page 446 of the opinion, it was said:

> "The words of the statute being clear, if it unjustly discriminates against the native born citizen, or is cruel and inhuman in its results, as forcefully contended, the remedy lies with Congress and not with the courts. Their duty is simply to enforce the law as it is written, unless clearly unconstitutional."

As was pointed out by Judge Bland in the opinion below (R., 415) the Court is not permitted "to speculate as to why Congress, as a whole or as individuals, would wish to include or exclude one of the well-known grades of wool from the protective tariff provision."

As was stated by this Court through Mr. Justice Hughes in a customs case: *United States* v. *Citroen*, 223 U. S., 407, 415:

> "We are not concerned with the reason for the distinction; it is enough that Congress made it."

In an early customs case decided by this Court in *Pennington* v. *Coxe*, 2 Cranch., 33, 59, Mr. Chief Justice Marshall, speaking for the Court, said:

> "These political motives which induced the legislature to select objects of revenue, and to tax them under particular circumstances, are not for judicial consideration."

In view of the fact that the law as enacted clearly omits combing wool from the taxing provision it would be useless for petitioner to attempt to show that it was the policy of the Government to include it.

In *United States* v. *First National Bank*, 234 U. S., 245, it was said, at page 260 of the opinion:

> "But the policy of the Government in passing legislation is often an uncertain thing, as to which varying opinions may be formed, and may, as is the fact in this case, afford an unstable ground of statutory interpretation." Citing Hadden *v.* The Collector, 5 Wall, 107, 111.

Even if it could be shown that there was no good reason why combing wool should have been omitted from the statute, that would not constitute a reason for its being interpolated by the Court. In *Bates Refrigerating Co.* v. *Sultzberger*, 157 U. S., 1, 37, it was said:

> "It is not for the Court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions."

The rule against enlarging the subject matter of a statute by judicial interpretation has been applied with even greater particularity in the case of statutes levying taxes including customs duties.

In *Eidman* v. *Martinez*, 184 U. S., 578, 583, this Court speaking through Mr. Justice Brown said:

> "We have ourselves had repeated occasion to hold that the customs revenue laws should be liberally interpreted in favor of the importer, and that the intent of Congress to impose or increase a tax upon imports should be expressed in clear and unambiguous language."

The same rule was again stated in *Gould* v. *Gould*, 245 U. S., 151, 153, wherein Mr. Justice McReynolds speaking for the Court said:

> "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the citizen. United States *v.* Wigglesworth, 2 Story, 369; American Net & Twine Co. *v.* Worthington, 141 U. S., 468, 474; Benziger *v.* United States, 192 U. S., 38, 55."

The rule was again repeated in *United States* v. *Merriam*, 263 U. S., 179, 187, 188, wherein *Eidman* v. *Martinez*, *supra*, was cited with approval. Mr. Justice Sutherland speaking for the Court referred to a still earlier recital of the rule by Lord Cairns in *Partington* v. *Attorney-General*, L. R. 4 H. L., 100, 122, from which we quote the following:

> "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

It will thus be seen that even if the present question were one of doubt, the doubt would be resolved in favor of the importer.

In *American Net & Twine Co.* v. *Worthington*, 141 U. S., 468, this Court had under consideration the tariff classification of certain "gilling twine." Mr. Justice Brown speaking for the Court said at page 475 of the opinion:

> "We think the intention of Congress that these goods should be classified as "gilling twine," is plain; but were the question one of doubt, we should still feel obliged to resolve that doubt in favor of the importer, since the intention of Congress to impose a higher duty should be expressed in clear and unambiguous language."

The same view has been taken by this Court in other customs cases.

> *Hartranft* v. *Weigmann*, 121 U. S., 609, 616;
> *Benziger* v. *United States*, 192 U. S., 38, 55.

C. *In reaching its conclusions, the Court of Customs Appeals proceeded according to the well-established rules governing the tariff classification of imported merchandise. Its decision was right.*

The plain facts of the case are these: The Emergency Act in clear language requires a duty on clothing wool. The wool at bar is combing wool. Clothing wool and combing wool are separate, distinct and different classes of wool. That the present wool is in fact combing wool does not seem to be anywhere disputed, nor indeed could it be, because that fact was well-established by the practically unanimous testimony of all the witnesses including those called by the Government.

The Court of Customs Appeals accepted the normal, ordinary meaning of the term "clothing wool" as defined in the dictionaries, encyclopedias and publications of the federal government, including the Tariff Commission and the Department of Agriculture. The Court gave due consideration to the use of the term in prior tariff acts and to the use and understanding of the term by witnesses from various branches of the wool industry.

As to the testimony of the witnesses, Judge Bland, speaking for the Court, says in the opinion in Suit 2215 (15 Treas. Dec., 169) (Appendix, pp. 49, 50):

> "The record sets out the testimony of numerous witnesses, all of whom have had wide experience in connection with some phase of the woolen question either as purchasers, sellers, appraisers, sorters, importers, exporters, or classifiers. It can be fairly said that there is very little controversy among the witnesses as to the meaning of the terms "clothing wool" and "combing wool." With almost perfect unanimity they have agreed that anyone and everyone knowing anything about wool as an article of commerce knows that clothing wools are the short-fibered wools commonly used by manufacturers in the woolen system of manufacturing, while combing wools are long-fibered wools commonly used by worsted manufacturers in the worsted system."

In regard to the lexicographers and federal publications, Judge Bland on the same page of the opinion says, as follows:

> "The dictionaries, lexicons, encyclopedias, and writers on the woolen industries, as well as such agencies of the Government as the Tariff Commission and the Agricultural Department, vary but

> little in their definitions of clothing wool and combing wool, and all, with but few and immaterial exceptions, define clothing wool as a wool of short fiber used in the woolen process, and distinguish it from combing wool, which they define as another class of wool having a long fiber, used in the worsted process, in which process it is combed."

The opinion sets forth copious extracts from the authorities referred to wherein the terms "clothing wool" and "combing wool" are defined and discussed.

In regard to the use of the terms "clothing wool" and "combing wool" in prior tariff acts, the opinion sets forth the material wording of every tariff provision covering wool from the Act of May 19th, 1828 down to and including the Act of 1913 (45 Treas. Dec., 181, 182, see also Appendix hereto, pp. 70-74).

It will be noted that the terms "clothing wool" and "combing wool" are used constantly throughout the legislation in question, and wherever they are used they describe separate and distinct classes of wool.

All of the above sources of information united in one common use and definition of the term "clothing wool," and in view of this universally accepted understanding and meaning for the term, the Court held that its meaning was not ambiguous.

The mere fact that the term is widely used, discussed and defined in official publications of the federal government would in itself leave no doubt as to what Congress understood to be the scope and meaning of the term.

In the latter connection it might be noted that as late as May 26, 1924, the Treasury Department in a regulation requires importers of wool to classify clothing wool and

combing wool separately on their customs entries, T. D. 40217 (45 Treas. Dec., 670).

In *United States* v. *Buffalo Natural Gas Fuel Co.*, 78 Fed., 110, the Circuit Court of Appeals, in the Second Circuit, had before it a customs case brought there, under the then existing procedure, from the Board of General Appraisers. The question before it involved the meaning of the term "minerals" as used in a tariff provision, the specific question being whether it included "natural gas." It was there found that natural gas was listed as a mineral in the "Statistical Abstract of the United States" prepared under the direction of the Secretary of the Treasury and containing statistics of finance, coinage, commerce, etc. In its opinion, the Court speaking through Judge Lacombe, said, at page 112:

> "If the question whether the word 'mineral' in ordinary speech would include such an article as natural gas, were to be settled solely from reference to the dictionaries, its solution might not be easy. In view, however, of the various official publications by the federal government set forth in the record, and which are not intended for scholars or scientific men, but to give to Congress and to the people the best knowledge the compilers can, there can be little doubt as to what Congress understood to be the scope and meaning of the words,—a scope and meaning which is within some, at least, of the definitions of the lexicographers."

In *Merck* v. *United States*, 6 Ct. Cust. Appls., 32, 34, 35, official bulletins published by the Department of Agriculture were accepted as determinative of the meaning of the term "sheep dip."

In the present instance all dependable sources of in-

formation unite in one common definition of the term "clothing wool," and it would be obviously absurd to say that Congress with this information before it, would deliberately select the term "clothing wool" intending that it should be given a meaning different from that in which it was understood wherever and whenever it was used.

The petitioner urges that the Court should not have given consideration to the testimony of commercial witnesses as to the meaning and use of the term. The contention, however, is obviously without merit. In the first place, the Court did not base its conclusion as to the meaning of the term solely upon the testimony of commercial witnesses. That was merely one of the considerations. As we have already pointed out, the Court gave full consideration to the definitions in the dictionaries, encyclopedias, publications of the federal government and to the use of the term in prior tariff acts. All of these sources united in one common meaning. Obviously the commercial understanding could not be excluded without excluding the only meaning in which the term is ever understood or used. The union of these various sources in a common definition simply established what already existed as a presumption. Thus in *Swan* v. *Arthur*, 103 U. S., 597, this Court said:

> "While tariff acts are generally to be construed according to the commercial understanding of the terms employed, language will be presumed to have the same meaning in commerce that it has in ordinary use, unless the contrary is shown."

Furthermore, there was ample authority for the Court to give due and proper consideration to the testimony of the commercial witnesses as to the use and understanding

of the term. Raw wool because of its very nature exists only as an article of commerce. Laws imposing duties upon imported merchandise are intended for practical use and application by men engaged in commerce and presumably are drafted in language understood by those to whom they are necessarily directed. This was early recognized by this Court in *Re Two Hundred Chests of Tea*, 9 Wheat., 438, wherein Mr. Justice Storey, speaking for the Court said, at page 438 of the opinion:

> "The object of the duty laws is to raise revenue, and for this purpose, to class substances according to the general usage and known denominations of trade."

In *Elliott* v. *Swartwout*, 35 U. S. (10 Pet.), 137, 151, this Court speaking through Mr. Justice Thompson, said:

> "Laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce; and hence it has become a settled rule in the interpretation of statutes of this description to construe the language adopted by the legislature, and particularly in the denominations of articles, according to the commercial understanding of the terms used."

In *Hedden* v. *Richard*, 149 U. S., 346, 349, this Court, speaking through Mr. Justice Shiras said, in regard to a tariff provision:

> "The words are to be taken in the sense in which they will be naturally understood by those to whom they are addressed."

The above rules have been universally followed in the interpretation of tariff provisions. In fact, they were followed by the Court of Customs Appeals in an earlier

case involving the same provision of the Emergency Act as is involved in the present case, namely "wool, commonly known as clothing wool." *United States* v. *Davies*, 11 Ct. Cust. Appls., 392, 395. In the latter case, the Government accepted the decision without further agitation and a large number of claims were settled thereunder by stipulation.

As was clearly pointed out by the Court of Customs of Appeals in its opinion in Suit 2245, none of the words of the present provisions,—"wool, commonly known as clothing wool"—is new to tariff legislation. The identical phrase "commonly known as" has been used in connection with other merchandise in prior tariff acts. Thus in *Tiffany* v. *United States*, 131 Fed., 398, the Court was called upon to determine the character of articles coming within the provisions for "articles commonly known as jewelry." Its conclusion was based upon the testimony of witnesses from various branches of the trade. The decision in *Tiffany* v. *United States, supra*, was acquiesced in by the Treasury Department in Treasury Decision 25316 (7 Treas. Dec. 840). In the opinion in Suit 2245, Judge Bland also called attention to the fact that the synonymous phrase "usually known" has appeared in five prior tariff acts in connection with the commercial names of various classes of wool, such as Leicester, Cotswold, Lincolnshire Down Combing Wools, Canada Long Wools, etc., and that "no Court or administrative official has held that the phrase 'usually known' changed the meaning from that understood by those familiar with the terms used in woolen commerce and trade" (45 Treas. Dec., 177, 178). (Appendix herein, pp. 64, 65.)

In *Cooper* v. *Dobson*, 157 U. S., 148, this Court had

under consideration an importation of short goat hair that had been classified for duty under Schedule K of the Tariff Act of 1883 in the following provision (22 Stat., 488, 508):

> "Class two, combing wools.—That is to say, Leicester, Cotswold, Lincolnshire down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also all hair of the alpaca, goat, and other like animals."

The importers contended that the goat hair in the importation was too short to be suitable for combing and asked this Court to construe the above provision "as meaning that class two should consist wholly of articles that could be used for combing purposes, that is, as well hair of the goat as wools that were susceptible of treatment by combing," thus excluding the hair in question.

In declining to construe the provision in the manner requested this Court, speaking through Mr. Justice Shiras said at page 153:

> "Adopting the reasoning and the language of the opinion of the Circuit Court of Appeals above referred to, we hold that, upon the face of the Act of 1883, and according to the clear and unambiguous meaning of its words, no wools, indeed, are included in class 2, except combing wools or wools fit for combing; but that there is no such restriction with regard to hair * * *."

The opinion of the Circuit Court of Appeals referred to, was *United States* v. *Hopewell*, 51 Fed., 798 (5 U. S. App., 137).

If the phrase "usually known" as used in the above provision does not make the meaning of the term "comb-

ing wool" ambiguous, there is no reason why the synonymous phrase "commonly known" should make the term "clothing wool" ambiguous in the present enactment.

Long staple wool is usually or commonly known as combing wool. Short staple wool is usually or commonly known as clothing wool. Combing wool is suitable for combing, clothing wool is not.

While the origin of the respective classes has changed during the past fifty years and cross breeding has somewhat changed the blood distinctions, yet the fundamental difference between the two classes—clothing wool and combing wool—is the same today that it has always been —clothing wools are and always have been the short wools used in the woolen industry, combing wools are and always have been the long wools used in the worsted industry.

Having found that the terms of the Act were unambiguous and that the term "clothing wool" when given its normal and generally accepted meaning, did not include combing wool, the Court of Customs Appeals declined to enlarge the taxing provision so as to include a class of wool not included within the clear meaning of its terms.

In the foregoing we have discussed the reasoning and conclusions of the Court of Customs Appeals in Suit 2245.

When these precise questions came up again to the Court of Customs Appeals in the present proceedings, Judge Bland again speaking for the Court said, in the opinion below (R., 413):

> "When we read the testimony of additional witnesses and consult additional authorities, it becomes more apparent that the common meaning

of the words 'clothing wool' is that it is a short-fibered wool."

Respondents respectfully submit that the conclusions of the Court of Customs Appeals were based upon sound and well-established principles and that there is no occasion for further review.

D. *The precise question at issue is one of classification of merchandise. It is an ordinary customs case with the usual issues. Since the creation of the Court of Customs Appeals, certiorari to that Court has been confined for the most part to cases involving treaties, jurisdictional questions and important questions other than the classification of merchandise.*

Petitioner has attempted to create impressive issues of statutory construction that really have no appropriate place in the present discussion. When shorn of such issues, which are merely the creation of tenuous argument, the case resolves itself into an ordinary question of customs classification. Questions of this kind are constantly before collectors of customs for determination. The simple question is,—should the wool at bar be classified as clothing wool? That, and that only, is the question in the present case.

Prior to the creation of the Court of Customs Appeals, decisions of the Collector and the Board of General Appraisers were reviewed by the Circuit Courts and Circuit Courts of Appeals in the circuits where the importations in question were entered. Under this procedure it was frequently necessary for this Court to review by certiorari ordinary customs cases in order to reconcile conflicting decisions between the different circuits.

At an earlier period prior to 1890, the number of ordi-

nary customs cases reviewed by this Court was even greater because under Section 699 of the Revised Statutes, these cases could be brought to this Court on writ of error. When the Court of Customs Appeals was created by Section 29 of the Tariff Act of 1909 (36 Stat., 11, 105) the new Court was given exclusive appellate jurisdiction to review by appeal decisions of the Board of General Appraisers.

Since the creation of the Court of Customs Appeals, eighteen petitions for certiorari have been filed, six of these were granted, ten were denied and two including the present case are pending.

An examination of the six cases wherein writs were issued shows that for the most part they involved treaty, jurisdictional and other important questions other than the classification of merchandise. The six cases are as follows:

The Five Per Cent. Discount cases, 243 U. S., 97;
Nicholas v. *United States*, 249 U. S., 34;
F. Vitelli v. *United States*, 250 U. S., 355;
United States v. *Aetna Explosives Co.*, 256 U. S., 402;
United States v. *Rice*, 257 U. S., 536;
United States v. *Fish*, 266 U. S., 598 (Ad. Sheets).

From a practical commercial point of view, there exist very impelling reasons why customs cases involving merely questions of classification of merchandise should not be made the subject of certiorari.

To the merchant who is importing merchandise and who must adjust his prices according to the rate of duty applicable, and to the domestic manufacturer who is competing with imported commodities and who must fix his

prices according to the rate of duty applicable to the competing imported commodities, an expeditious and final determination of the rate of duty applicable to a given commodity is frequently as important and sometimes more important than what that particular rate shall be.

Undoubtedly, the purpose of creating the Board of General Appraisers and later the Court of Customs Appeals was to supply procedure whereby questions of classification could be expeditiously and finally determined by tribunals specially equipped and experienced in this specialized branch of jurisprudence. Where constitutional and treaty questions, or questions of jurisdiction or important questions of procedure are drawn in the situation presents a different aspect and the amendment to the Judicial Code making provision for certiorari was undoubtedly intended to apply to such situations.

It was clearly not the purpose of the Code to have presented to this Court the question as to whether a shipment of wool should be classified as clothing wool or as combing wool.

CONCLUSION.

In view of the foregoing it is respectfully submitted that the present case presents no reasons for the issuance of a writ of certiorari.

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September, 1925.

APPENDIX.

Section 195 of the Judicial Code, as Amended August 22nd, 1914, c. 267, 38 Stat. 703.

SEC. 195.—The Court of Customs Appeals established by this chapter shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by a Board of General Appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said Court of Customs Appeals shall be final in all such cases: *Provided, however,* That in any case in which the judgment or decree of the Court of Customs Appeals is made final by the provisions of this title, it shall be competent for the Supreme Court, upon the petition of either party, filed within sixty days next after the issue by the Court of Customs Appeals of its mandate upon decision, in any case in which there is drawn in question the construction of the Constitution of the United States, or any part thereof, or of any treaty made pursuant thereto, or in any other case when the Attorney General of the United States shall, before the decision of the Court of Customs Appeals is rendered, file with the court a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court, to require, by certiorari or otherwise, such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court: *And provided further,* That this act shall not apply to any case involving only the construction of section one, or any portion thereof, of an act entitled "An act to provide revenue, equalize

duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, nor to any case involving the construction of section two of an act entitled "An act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes," approved July twenty-sixth, nineteen hundred and eleven.

Paragraphs 18 and 19 Emergency Tariff Act of May 27, 1921—(42 Stat. 9, 10).

Par. 18.—Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. Unwashed wools shall be considered such as shall have been shorn from the animal without any cleaning; washed wools shall be considered such as have been washed with water only on the animal's back or on the skin; wools washed in any other manner than on the animal's back or on the skin shall be considered as scoured wool. On wool and hair provided for in this paragraph, which is sorted or increased in value by the rejection of any part of the original fleece, the duty shall be twice the duty to which it would otherwise be subject, but not more than 45 cents per pound.

Par. 19.—Wool and hair of the kind provided for in paragraph 18, when advanced in any manner or by any process of manufacture beyond the washed or scoured condition, and manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value, 45 cents per pound in addition to the rates of duty imposed thereon by existing law.

Paragraph 650 of the Free List of the Tariff Act of October 3, 1913, 38 Stat. 114, 164.

Par. 650.—Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by schedule K of the existing law shall remain in full force and effect.

Opinion of the Court of Customs Appeals of November 17, 1923, in Suit 2245 (Stone & Downer v. United States, 45 Treas. Dec. 167, T. D. 40019).

(T. D. 40019.)

WOOL—EMERGENCY ACT.

STONE & DOWNER CO. ET AL. *v.* UNITED STATES (No. 2245).

UNITED STATES COURT OF CUSTOMS APPEALS,

November 17, 1923.

APPEAL FROM BOARD OF UNITED STATES GENERAL APPRAISERS, G. A. 8613 (T. D. 39473).

[REVERSED.][1]

Before—MARTIN, Presiding Judge, and SMITH, BARBER, BLAND and HATFIELD, Associate Judges.

BLAND, Judge, delivered the opinion of the court:

The merchandise covered by this appeal consists of wool, worsted yarn, and worsted cloth. The wool was assessed for duty under paragraph 18 of the emergency tariff act of 1921, reading "wool, commonly known as clothing wool." Appellants claim that the wool in ques-

[1] See denial of rehearing, post.

tion is combing wool, and that the yarn and cloth are made from combing wool. The yarns and cloth were assessed for duty under paragraphs 287 and 288 of the act of 1913, and in addition 45 cents per pound under paragraph 19 of the emergency act. It is the contention of the importers that combing wool is not included in paragraph 18, and that their importation falls under the free list of the act of 1913, paragraph 650.

The three paragraphs with which this case is concerned are paragraphs 18 and 19 of the emergency act, and paragraph 650 of the act of 1913, as follows:

The emergency act—

> 18. Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. Unwashed wools shall be considered such as shall have been shorn from the animals without any cleaning; washed wools shall be considered such as have been washed with water only on the animal's back or on the skin; wools washed in any other manner than on the animal's back or on the skin shall be considered as scoured wool. On wool and hair provided for in this paragraph, which is sorted or increased in value by the rejection of any part of the original fleece, the duty shall be twice the duty to which it would otherwise be subject, but not more than 45 cents per pound.
>
> 19. Wool and hair of the kind provided for in paragraph 18, when advanced in any manner or by any process of manufacture beyond the washed or scoured condition, and manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value, 45 cents per pound in addition to the rates of duty imposed thereon by existing law—

and paragraph 650 of the act of 1913, reading as follows:

> 650. Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by schedule K of the existing law shall remain in full force and effect.

The importers' position is that the words "commonly known as clothing wool" have a well-settled meaning commercially, and with all those who are familiar with the woolen subject, and that "combing wool" is distinct from "clothing wool," and therefore not included in paragraph 18.

The Government contends that "clothing wool" is used here in a broad sense to mean all wool used for making clothing, and that the words "commonly known as" give them a different meaning from that usually applied commercially to a class of wool.

The record sets out the testimony of numerous witnesses, all of whom have had wide experience in connection with some phase of the woolen question either as purchasers, sellers, appraisers, sorters, importers, exporters, or classifiers. It can be fairly said that there is very little controversy among the witnesses as to the meaning of the terms "clothing wool" and "combing wool." With almost perfect unanimity they have agreed that anyone and everyone knowing anything about wool as an article of commerce knows that clothing wools are the short-fibered wools commonly used by manufacturers in the woolen system of manufacturing, while combing wools are long-fibered wools commonly used by worsted manufacturers in the worsted system. The woolen system of manufacturing embraces the process of carding, while the worsted system of manufacturing embraces the process of combing. While there may be exceptions to

the rule, short wools are carded and long wools are combed. The two main classes of wools, therefore, have sometimes been stated as consisting of carding wool and combing wool. But, as a general thing, carding wool and combing wool have been used synonymously. The dictionaries, lexicons, encyclopedias, and writers on the woolen industries, as well as such agencies of the Government as the Tariff Commission and the Agricultural Department, vary but little in their definitions of clothing wool and combing wool, and all, with but a few and immaterial exceptions, define clothing wool as a wool of short fiber used in the woolen process, and distinguish it from combing wool, which they define as another class of wool having a long fiber, used in the worsted process, in which process it is combed. The following are some of the definitions taken from various sources:

> Sheep are classified on the length of staple into short wools, medium wools, and long wools.
>
> Wool is classed under three general heads: (1) The carding or clothing wools, (2) the combing or worsted wools, and (3) miscellaneous or carpet and blanket wools. (Nelson's Perpetual Loose-Leaf Encyc. Vol. XII, Wool, p. 634.)
>
> The length of staple, which is made a basis of general classification, is largely a constitutional or breed characteristic, the staple being from 1 to 2 inches long in the finest Merinos, 8 inches or more in the Lincolns, and reaching 12 and even 15 inches in some combing wools, the length of staple suggesting the grouping of sheep into short wools, middle wools, and long wools. The fine felting wools have a short staple, as a rule, and are used for carding or yarn purposes, while the longer, more lustrous and less wavy ones are better suited to combing and worsteds. * * * The three main classes of wool on the basis of staple are: (1) Carding or clothing wools, or those of the Merino type, in which felting qualities are desired;

(2) combing wools, in which length of staple is required and felting qualities not desired, used for hard-spun, non-felting worsteds; and (3) miscellaneous, sometimes called carpet or blanket wools, long, strong, coarse wools, used for carpets, blankets, and coarse clothing. The clothing wools are commonly classified as picklock * * *, picklock being an extremely fine fiber. The mass of high-grade clothing is made of the XX and X grades. The combing wools, often called Delaines, were formerly derived from the English mutton breeds, but machinery has been adapted for combing the Merino carding or felting wools, which have been lengthened by breeding and selection. The clothing wool used in the United States, aside from home production, is derived mainly from Australia, South America, and South Africa. The imported combing wool comes mainly from Great Britain, although much comes from New Zealand, Argentina, and Canada. The coarse carpet wools are the product of neglected flocks and unskilled breeding throughout the world. (New International Encyc., Wool, vol. 20, pp. 642-643.)

Wool is divided into pull and clipped or fleece wools, the former being pulled by the roots from the pelt of the dead animal, and the latter clipped from the living one. The clipped wools form the greater part of the wool in market, and these again are divided into long and short staple, or combing and clothing wools. (Appleton's New Practical Cyc., vol. 6, p. 131.)

Wools are divided into two great classes, clothing wools and combing wools, and the fabrics woven from them are termed woolens and worsteds. (Knight's Cyc. of Industry, Woolen and Worsted Manufactures, p. 1795.)

According to the Bradford system of manufacture, wools are classed as "combing" or "clothing."

A wool to be combing must be at least 2½ inches in length, while wools shorter than that are used for carding and are termed "clothing."

There is a third class called "carpet wools," which includes the very coarse wools and inferior wools not well adapted to the finer class of goods for which the first two classes are used. Carpet wools, are, however, either carded or combed.

The introduction of the French comb has made it possible to comb wools of a shorter length than heretofore, and many of the wools formerly used for carding or clothing are now combed with this comb and are known as "baby combing."

The terms "staple" or "combing" and "clothing" are often added to the grade names to distinguish them. Both the staple or combing and the clothing of a given grade are the same fineness, but the combing wools are generally used for the manufacture of worsteds, while the clothing is used in the manufacture of woolens. (Encyclopedia Americana, Vol. 29, pp. 501, 502.)

Wool when shorn is divided into two classes, short wool or carding wool, seldom exceeding a length of 3 or 4 inches, and long wool or combing wool, varying in length from 4 to 8 inches, each class being subdivided into a variety of sorts according to the fineness and soundness of the staple. (Century Dictionary, 1911, Wool.)

Clothing wool—a fine, close, short-stapled wool. (Webster's New International Dictionary.)

Wool—The three main classes on the basis of staple are (1) carding or clothing wools, or those of the Merino type, in which felting qualities are desired; (2) combing wools in which length of staple is required; and (3) miscellaneous wools, long, strong, coarse wools used for carpets, blankets, and coarse clothing and sometimes called "carpet" or "blanket" wools. Webster's New International Dictionary.)

Combing wool.—A wool adapted for being combed. (Webster's New International Dictionary.)

Clothing wool—a compact, fine, short-fibered wool suitable for felting. (Standard Dictionary.)

Clothing wool—a wool usually short and fine in fiber, specially suited in structure of fiber for the woolen trade.—The Wool Year book, 1923, p. 495. ("Textile Mercury" Annuals.)

The term "clothing" is applied to wools specially adapted for woolen manufacturing, distinguishing them from "combing" wools used in the production of worsted yarns. The properties relate to fineness of fiber, felting, strength and elasticity, length of staple, softness of handle, and purity of color.—Roberts Beaumont, "Woolen and Worsted," p. 12 (1915).

Worsted is the fiber of wool all laid exactly parallel. Woolen is crossed and uneven like a spider's web. They take all the long hairs and straighten them exactly parallel; and the shorter ones or noils are used for woolen yarns. Only the long fibered can be made into worsted. The fibers of wool to be used in worsted are separated from the short by combing, and the fibers of woolen are crossed by carding. The former are combing wools. The latter are card and clothing wools, which formerly were the only wools used in cloths. (Wool and Manufactures of Wool, Special Report, prepared by the Chief of the Bureau of Statistics, Treasury Dept., 1888, p. XX.)

In 1918 the wool division of the War Industries Board issued the following valuation and classification for wool in connection with their Government purchases:

Valuations as of July 30, 1917.

	Basis clean scoured.
Fine Delaine	$1.85
Fine clothing	$1.75 choice, $1.70 average
Half-blood staple	1.68
Half-blood clothing	$1.60-$1.62
Three-eighths staple	1.45
Three-eighths clothing	1.42
Quarter-blood staple	1.32
Quarter-blood clothing	1.30
Low quarter-blood	1.17
Common and braid	1.07

Quoting from page 215, report of the United States Tariff Commission on the wool growing industry, 1921, we find:

> On the basis of length, the division is into "*combing*" and "*clothing.*" Combing wool is used in the Bradford (English) system of worsted manufacture, in which nearly all the shorter lengths are combed out as "noil," while the fibers are laid parallel in making the "tops," which is the first stage in the manufacturing process after scouring. Strictly clothing wools are adapted only to carding, by which process the fiber is laid in every direction, interlocked or felted, and are manufactured into "woolen" goods. Noils, which is the by-product of combing and mill waste in general, are used with clothing wools in making some woolens.

The Department of Agriculture of the United States issues various bulletins on the woolen industry, both from the standpoint of the grower and of the manufacturer. Bulletin 206 of the Department of Agriculture, under the title "The Wool Grower and the Wool Trade," on pages 5 and 6, is quoted here as follows:

> *Classes of wool.*—The value of wool is influenced

more or less by its length and it is classified accordingly. The longer wools are known as "combing" and the shorter ones as "clothing." * * * This classification is founded upon the English or Bradford system of manufacture, which requires a wool to be about 2½ inches long to be successfully combed. The lower grades of combing wools are usually considerably longer than this, as the coarser wool generally has more length. Clothing wools are shorter. Of late years a class midway between the two has sprung up, known as "baby combing." The French combs handle this length of staple quite satisfactorily. The combing wools are used in worsted manufacturing. Only the longer straightened fibers are used and these are placed parallel in the yarn. The short, broken, and tangled fibers are removed and make up the "noils." Not only is length required, but also strength. Tender wools will not stand the combing process and are unfitted for this purpose, regardless of length. None but virgin wools are used in the manufacture of worsteds.

Clothing wools are used in the manufacture of woolens, felts, etc. The fibers are laid in every direction, and instead of attempting to arrange them parallel as in worsteds, the opposite extreme is desired. Noils, shoddy, etc., can be used in this process of manufacture.

The difference in value between combing and clothing wools is from 2 to 6 cents per scoured pound in favor of the former.

Coarse, low wools, more or less resembling hair, are classed as carpet wools. A very small amount of these are produced in America, most of those used being imported from Asia. Some Navajo wool is used in carpet manufacture.

From the same bulletin, page 18, the following is quoted:

> Classification and grades of territory wool—
> Combing—
> Fine staple.
> Fine medium staple. } usually one grade.
> Half-blood staple.
> Three-eighths-blood staple.
> Quarter-blood staple.
> Low quarter-blood.
> Coarse, common, low, or braid. } often one grade.
> Clothing—
> Fine clothing.
> Fine medium clothing. } usually one grade.
> Half-blood clothing.
> Three-eighths-blood clothing.
> Quarter-blood clothing, or short quarter-blood.

In "Wool and Wool Manufacture, a Brief Analysis for the Layman," 1920, James Paul Warburg writes:

> As we take up the manufacture of worsted and woolen yarns, we shall see how these qualifications play a different part in the two processes. For the present the only difference we are concerned with is staple length. Generally speaking, wools under 2 inches are too short to be combed and are classed as clothing wools. Clothing wools are used for woolens, combing wools for worsteds. In recent years combing machinery has been devised which will comb wools under 1 inch in length so that a considerable quantity of "clothing wools" now go into worsteds (p. 11).

In trying to arrive at the proper construction of the words "commonly known as clothing wool," we are first confronted with the question, To whom did Congress intend that the interpreters of the act should look to find out what kind of wool was commonly known as cloth-

ing wool? It seems that there can be no possible dispute that if the words "clothing wool" were used by themselves there could be little contention but what the term would exclude combing wool, for the reason that all authorities and sources of information agree that clothing wool is a short-stapled wool used in woolen manufacture and in the carding process. If the Government has any strength to its position at all, it must be by reliance upon the use of the words "commonly known as."

While the authorities indicate that under improved methods clothing wools are sometimes used in the worsted process, and that combing wools are sometimes used in the woolen process, it is by no means the rule, since even with improved machinery they are not easily changed out of their former class and use without loss. In this connection the following authorities may be pointed out:

Encyclopedia Britannica, Vol. XXVIII, eleventh edition, pages 813-815—

> Prior to the invention of a really satisfactory mechanical comb, between 1850 and 1860, the combing operation was the limitation of the worsted trade * * *. The characteristic feature of wool and wool yarns and cloths is the quality of "felting." This quality has always been made use of in woolen cloths, but in worsted cloths, until comparatively recently, it has been largely ignored. To-day, however, cloths are made ranging from the truest woolen to the typical worsted, of which it would be impossible to indicate the type of yarn employed without very careful analysis.

Encyclopedia Britannica, new Vol. XXXII, page 1068—

NOTE.—Large quantities of clothing wool may be employed for combing purposes.

Tariff Commission's Report on Wool Growing Industry, 1921, page 25—

> The board (1911) also pointed out that there was no longer any good reason for distinguishing between Class I and Class II wools, because improvements in combing machinery now make it possible to use much shorter staple wools than formerly in the manufacture of worsted.

On page 26 is found—

> The distinction between Class I and Class II wools seems particularly unnecessary. The amount of wool of Class II now imported is comparatively small. Improvements in machinery are constantly bringing about an interchangeability in the use of different kinds of wool, and the case seems clear for doing away with the distinction. * * * One rate on all wool suitable for making wearing apparel and another rate on what were formerly Class III wools would do much towards this result.

It might be urged that the framers of the emergency law used the words "clothing wool" to embrace classes 1 and 2 in conformity with the apparent recommendation of the Tariff Commission, but it is clear that Congress did not adopt the recommendation of the Tariff Commission, since it did not specially say "classes 1 and 2," nor did it say, "all wool suitable for making wearing apparel."

The fact that under modern conditions some clothing wool is used in the worsted process, and some combing wool is used in the woolen process, furnishes an additional reason for Congress to have used the words "all wool" or to have included both classes by some appropriate term. Yet there is nothing in the record nor in the history of tariff legislation that tends to show that the interchangeability of use of the two classes of wool has in any way changed the use of the term by those who speak with understanding on the subject. The emergency act does not attempt to consolidate the two classes

of wool under a new term, but emphasizes the ordinary use of the name which is now used, and for generations has been used, to describe one class.

In the briefs and in the argument before this court great stress was placed upon the fact that the Congressional Record of February 1, 1921, at page 2498, shows that Senator Lodge introduced the following amendment:

> Paragraph 18, page 3, line 16, strike out the words "wool, commonly known as clothing wool," and in place thereof insert the words "all wools."

As far as we have been able to observe, the courts have never given the introduction of an amendment by a legislator the force of evidence tending to prove legislative intent, but have regarded the action of either branch of the legislature on such an amendment as having probative effect.—*Koch* v. *United States* (6 Ct. Cust. Appls., 534-8-9; T. D. 36148); *Willenborg & Co.* v. *United States* (6 Ct. Cust. Appls., 451; T. D. 35985), and *Dunlap* v. *United States* (173 U. S., 65, 75). While this kind of evidence may be considered as throwing some light upon the question of legislative intent, we are inclined to regard it as doubtful, or at least, uncertain value. We are not privileged to know what motives prompted the acceptance, rejection, or failure of consideration of proposals made by individual members. To rely upon the act of one individual member in proposing legislation, or to give much weight to the failure of the body to consider the proposal, in determining the intent of the completed legislative enactment, would be very unsatisfactory procedure in construing its meaning. It is urged by the appellant that Senator Lodge, by his proffered amendment, recognized that the words "commonly known as clothing wool" did not embrace *combing wool*, and directed the attention of the Senate to the omission; and it is urged by the Government that the failure of the Senate to discuss or consider the amendment was evidence that the Senate believed the words "wool, commonly known as clothing

wool" embraced all wool, and that the amendment was unnecessary. However, this court in Koch, *supra*, in construing paragraph 166 of the act of 1913, took special notice of a somewhat similar case, in which an amendment introduced by Senator Smoot was referred to, but in that instance the amendment of the Senator was rejected by affirmative action of the Senate.

In the case of *Dunlap* v. *United States, supra*, we find the following:

> Without questioning the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of a statute passed by that body (United States *v.* Trans-Missouri Freight Association, 166 U. S., 290, 318), it is nevertheless interesting to note that efforts were made in the Senate to amend the bill by the addition of sections which, while making alcohol used in the arts free from tax, sought to secure the Government from fraud by provisions for the methylating of such spirits, so as to render them unfit for use as a beverage; that these proposed amendments were rejected (26 Cong. Rec. 6935, 6936); and that subsequently section 61 was adopted as an amendment, it being urged in its support that "if the Secretary of the Treasury and the Commissioner of Internal Revenue think they cannot adopt any regulations which will prevent fraud, then nothing will be done * * *."

It will be noted that there was affirmative action upon the amendments and that the court in rendering its decision did not rely upon the debates in Congress or upon the thought of one individual in introducing an amendment.

At any rate we cannot see how the introduction of the amendment of Senator Lodge and the subsequent failure of the Senate to act upon the same can give us any light upon the intention of Congress in its use of the terms under consideration.

If the terms used by Congress in the case at bar were ambiguous or indefinite, we might look further into the extrinsic circumstances incident to the passage of the act. Since the terms used are unambiguous, it is not proper to permit such evidence to impeach, destroy, or change the ordinary meaning of the language used, for such procedure would result in subjecting all laws to the hazard of a most uncertain and unreliable rule of interpretation. In the light of this position it is unimportant for us to consider the statements of the chairman and members of the Committee on Ways and Means, the report of the committee, and other evidence of this character.

Tariff laws, while subject to the same rules of construction and legal principles for the most part as other legislative acts, yet have during a century and a half of application acquired certain characteristics not found in other legislation, and certain definite principles of law have been laid down by the courts in construing tariff laws which of necessity do not apply to other kinds of legislation. We think it is well settled that tariff laws generally are framed in the language of men engaged in commerce, and are so framed that they may be understood by them, and that tariff laws are directed to the understanding of the class of citizens who are to operate under them, or who are to be affected by their provisions.—*United States* v. *Davies* (11 Ct. Cust. Appls., 392; T. D. 39317); *Hedden* v. *Richards* (149 U. S., 346, 349).

In the Davies, case, *supra*, the court said:

> Congress is presumed to know the nomenclature and language of commerce. Tariff laws apply especially to men engaged in commerce and are drafted in the words and terms and vocabulary which are in use and understood by the trade. Tariff designations must be held, therefore, to have the sense and meaning assigned to them by trade

> and commerce, and a distinction once made by Congress as to tariff commodities will be presumed to continue in the absence of anything showing a contrary legislative intention.

In the Hedden case, *supra*, the court said:

> In such case, as in the other case, the words are to be taken in the sense in which they will be naturally understood by those to whom they are addressed (p. 350).

In the case of *Elliott* v. *Swartwout* (35 U. S. [10 Pet.], 137), in holding that "worsted" was not woolen goods under the act of 1832, the court said:

> Laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce; and hence it has become a settled rule in the interpretation of statutes of this description to construe the language adopted by the legislature, and particularly in the denomination of articles, according to the commercial understanding of the terms used. This rule is fully recognized and established by this court, in the case of Two Hundred Chests of Tea, reported in 9 Wheat. 438. The court there say, the object of the duty laws is to raise revenue, and for this purpose, to class substances according to the general usage and known denominations of trade. Whether a particular article was designated by one name or another, in the country of its origin, or whether it were a simple or mixed substance was of no importance in the view of the legislature. It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic; and it would have been as dangerous as useless to attempt any other classification than that derived

> from the actual business of human life. It being admitted in this instance that worsted is a distinct article, well known in commerce under that denomination, we must understand Congress as using the term in that commercial sense and as contradistinguished from wool, and woolen goods, and other well-known denominations of goods (p. 150).

This rule seems not only to be well settled, but to be well grounded in principle. To whom should Congress address its tariff acts? To the populace of the street, who have nothing to do with the subject matter of the legislation? Or, should they be directed to those from whom the Congress expects obedience, and to its officers upon whom its administrative duties fall?

In the question at bar whom will we consult as to the meaning of the term "commonly known as clothing wool"? It has been suggested here that the inquirer should go out into the street and at random ask any English-speaking individual the meaning of the phrase "commonly known as clothing wool." It is urged that this would elicit the answer, "Wool from which clothing is made." It probably would elicit the answer, "I know nothing about the woolen business." But, if perchance, one familiar with growing, selling, importing, exporting, buying, grading, sorting, manufacturing, or handling wool in any way was asked the question, in our judgment he would say, "'Wool, commonly known as clothing wool,' is a wool of short fiber used in the woolen process, and is usually a carding wool." And if he were asked, "What is 'combing wool'?" he would reply that "it was distinguished from clothing wool chiefly on account of its long staple, which permitted it for the most part to be combed." Should interpreters of the act, in

seeking to properly classify a product, and in order to find out the definition of the words used, seek those who know nothing about the different classes of the article? Surely this would be to impute to Congress an absurd intention. Who is it that "commonly" knows clothing wool? The Government's position implies that there is a great class of citizens who are not engaged in the wool trade in any way, and who are not students of the wool question, and who have never consulted the dictionaries, encyclopedias, etc., but who have knowledge on the subject of clothing wool which we need in determining the intent of Congress. The class of people the Government has in mind may know what wool is, but probably have never heard of "clothing wool." Would it not be absurd to declare that Congress intended that the interpreters of the act, in trying to determine its meaning, should go to those who had never heard of the term rather than to those to whom the act was directed, or to those familiar with the use of the term wherever and whenever it is used? We can, therefore, see no additional meaning given to the words "clothing wool" by the use of the words "commonly known as," and in arriving at the conclusion we have considered the fact that it has not been shown in this case that there is any difference or any distinction between what is "commercially" known and what is "commonly" known. Indeed, we can see no difference in the meaning or application of the phrases "commonly known" and "usually known."

Paragraph 362 of the act of 1909 is as follows:

> 362. Class two, that is to say, Leicester, Cotswold, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used,

> and also hair of the camel, Angora goat, alpaca, and other like animals.

The corresponding provisions in the acts of 1897, 1890, 1883, and 1867, contained the same phrase, and as far as we know no court or administrative official has held that the phrase "usually known" changed the meaning from that understood by those familiar with the terms used in woolen commerce and trade.

There are cases where the imported article may have a definite commercial designation and yet be commonly known by another name. If in that instance Congress uses the words "commonly known as" in describing the article by a name other than the commercial term, then in construing its meaning, the courts universally hold Congress to have excluded the commercial designation.—*Cadwalader* v. *Zeh* (151 U. S., 171); *Roosevelt* v. *Maxwell* (20 Fed. Cas., 1155). But this is not a case where the commercial designation is relied upon by the importer; a commercial designation is not before us. But even if it were, there seems to be but one understanding as to the meaning of "clothing wool." In the case of *Tiffany* v. *United States* (131 Fed., 398), certain silver handbags or purses were held excluded from paragraph 434, act of 1897, which provided that "articles commonly known as jewelry," etc. Upon the testimony of commercial witnesses, the court said:

> The uncontradicted testimony of witnesses from various branches of trade, including dealers in jewelry, fancy goods, silverware, and of salesmen in department stores, shows that these articles are not commonly known as jewelry, and are not manufactured in jewelry factories, or sold as articles of jewelry.

It seems that this case stands on all fours with the case at bar. There the commercial definition of jewelry as taken from those familiar with the business was held to be the same as was "commonly known."

In *Swan* v. *Arthur* (103 U. S., 597), the court said:

> While tariff acts are generally to be construed according to the commercial understanding of the terms employed, language will be presumed to have the same meaning in commerce that it has in ordinary use, unless the contrary is shown.

There is certainly no showing in this case that the term "clothing wool" has a common or ordinary use different from its use among commercial men.

It is urged with much force by the Government that Congress intended *in the emergency* to levy duty on all wools except carpet wools, and that this court should declare the combing wool in controversy in this case clothing wool within the *broad* meaning of the act. It is urged that the court is privileged to take into consideration the conditions of commerce and trade on the date of the passage of the statute, the necessity for a protective tariff to be levied on combing wool which was seeking admission into our home market already filled with the home-produced product; that the report of the Tariff Commission before the framers of the law, the statements of members while in committee, and the debates of members of Congress while on the floor should be permitted to override the plain wording of the act in determining the legislative intent. The reasons and arguments set out by the Government in their very forceful brief and oral argument are quite impressive in that direction. After thoroughly considering the history of the legislation, the commercial and trade conditions at the time of its enact-

ment, and the committee's report on the bill, as well as other related documents, we are impressed with the fact that Congress *may* have thought that there was a necessity for levying a duty upon combing wool, and even, we dare to say, some Members of Congress may have felt that section 18 included combing wool. Some of them no doubt did not think that the terms used included combing wool. Some Members may have supported the legislation believing it covered all wool not expressly exempted, while others no doubt supported it because, according to their interpretation of the term, it did not include certain wools. To hold that Congress in its completed enactment, by the use of the words "commonly known as clothing wool" meant to include "combing wool" is to do violence to every rule and canon of construction known to tariff jurisprudence. The courts in construing tariff laws have almost uniformly held that it is the judicial function to construe the language as found in the statute, giving the words used their ordinary meaning, and where the language is plain, that the legislative intent can not be declared to be other than what the ordinary meaning of those words will import in the absence of evidence establishing a commercial meaning different from the ordinary meaning.—*Ringk & Co.* v. *United States* (10 Ct. Cust. Appls., 107; T. D. 38372); *Merck* v. *United States* (151 Fed., 14). In the latter case, the court said:

> The courts can only ascertain the legislative intention by the language used, and it is not their duty by a distorted construction to attempt to cover an article which may have been omitted even by inadvertence (p. 15).

No matter how great the emergency may be for a different construction, or what this court may think of the wisdom of Congress in failing to say "all wool," or to say "clothing wool and combing wool," or "Classes I and II," it would be a far-reaching and dangerous precedent to hold that the author of the bill did not know what he was saying when he introduced the bill, and that the committee did not know what they were reporting when they reported the bill, and that Congress did not know what it was making dutiable when it was enacting the legislation, and that the Executive did not know the meaning of the words in the act when he approved it.

In *United States* v. *Marsching* (1 Ct. Cust. Appls., 216; T. D. 31257), the court said:

> While it is true that every provision of law must be read in the light of all the other provisions of that law, and while it is true that the meaning of Congress, particularly in tariff legislation, must be ascertained in the light of conditions of commerce, and that in this light the language used by Congress must be interpreted, or even in some cases supplied, we do not think that in a case like this where the essential words supporting the construction contended for have been expressly omitted by Congress the courts can by any rule or method of construction read back into the act such words. * * * The fact that some inconsistency may be wrought by this holding, or that some inequalities of duties may be levied, or that some disturbance may be had in the remaining or other provisions, is not a sufficient warrant for the court to read back into the statute language expressly omitted therefrom by Congress. In the opinion of the court the language of the act is plain and unambiguous. The rule is well settled that in the presence of such a provision the court should abstain from interfering with the will of Congress as expressed.

The Supreme Court of the United States in *Bate Refrigerating Co.* v. *Sulzberger* (157 U. S., 1, at p. 37) said, restating an earlier opinion set out in *Scott* v. *Reid* (35 U. S. [10 Pet.], 524):

> Where the language of the act is explicit, there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the legislature. * * * It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions.

In *United States* v. *Fisher* (6 U. S. [2 Cr.], 358, 385), Chief Justice Marshall said that where the meaning of the legislature was plain "it must be obeyed."

In *United States* v. *Shing Shun & Co.* (173 Fed., 844), the court said:

> Where the language employed in an act is clear and certain, they [the court] have nothing to do with the reasonableness or justice of the results flowing from according to its natural, usual, and obvious meaning, nor with any supposed policy actuating its framers (p. 847).

The rule is very definitely laid down in *Coles* v. *Collector* (100 Fed., 442) as follows:

> To undertake a departure from the language used would in fact be an unjustifiable assumption by the court of legislative power. It is the duty of the court, where the language is free from doubt or uncertainty, to confine itself to the words of the legislative body that enacted the law, without adding thereto or subtracting anything therefrom.

Now, in the case at bar, having in mind all the evidence and all the definitions in all the books, authorities, and reports, and having before us the use of the terms by Congress in past legislation, is the meaning of the words "clothing wool," or of the phrase "commonly known as clothing wool" free from doubt or uncertainty? Is the definition well settled and free from ambiguity? If these questions are answered in the affirmative, this court has but one duty, and that is to "confine itself to the words of the legislative body."

Since the earliest days of the Republic's legislative life it has been confronted with the problem of levying duty upon wool. Congress has used many different words and phrases with many different meanings in its legislation on that question, and the past acts of Congress show that it possessed scientific and accurate knowledge on the subject. Its woolen schedules have been prepared in the language of, and for the understanding of, those who had acquired special knowledge of the subject matter. Can this court properly hold that in the preparation and passage of the emergency act it departed from all of its previous understanding of the definitions and application of terms, and intended that a different rule of interpretation should be applied to this special piece of legislation? It might be well for a fuller understanding of the legislative history to set out extracts from the various tariff acts of the past:

> *May 19, 1828.*—First. On wool unmanufactured, four cents a pound; * * *
>
> *July 14, 1832.*—First. Wool, unmanufactured * * *
>
> *March 16, 1855.*—* * * pelts; wool; * * * free of duty * * *
>
> *March 3, 1857.*—* * * sheep's wool, unmanufactured, of the value of twenty cents per pound * * * and hair of the alpaca, the goat, and other like animals * * *

March 2, 1861.—Sec. 12. First. —On all wool unmanufactured, and all hair of the alpaca, goat, and other like animals, unmanufactured * * * *Provided*, That any wool of the sheep, or hair of the alpaca, the goat, and other like animals * * *

Sec. 23. Wool, unmanufactured, and all hair of the goat, alpaca, and other like animals, unmanufactured * * *

June 30, 1864.—Sec. 4. On all wool, unmanufactured, and all hair of the alpaca, goat, and other like animals, unmanufactured * * * That any wool of the sheep, or hair of the alpaca, the goat, and other like animals * * *

July 28, 1866.—* * * in determining the dutiable value of merchandise * * * provided further that nothing herein contained shall apply to long-combing or carpet wools * * *

March 2, 1867.—* * * there shall be levied, collected, and paid on all unmanufactured wool, hair of the alpaca, goat, and other like animals * * * All wools, hair of the alpaca, goat, and other like animals, as aforesaid, shall be divided, for the purpose of fixing the duties to be charged thereon, into three classes, to wit:

Class 1. Clothing wool. That is to say, merino, mestiza, metz, or metis wools or other wools of merino blood, immediate or remote; down clothing wools and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from * * * and also including all wools not hereinafter described or designated in classes two and three.

Class 2. Combing wool. That is to say, Leicester, Cotswold, Lincolnshire, down combing wools, or other like combing wools of English blood, and usually known by the terms herein used; and also all hair of the alpaca, goat, and other like animals.

Class 3.—Carpet wools, and other similar wools. Such as Donskoi, native South American, Cordova, Valparaiso, native Smyrna, and including all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria, and elsewhere.

June 6, 1872.—Sec. 2. On all wools, hair of the alpaca, goat, and other like animals and all manufactures wholly or in part of wool or hair of the alpaca and other like animals, except as hereinafter provided (90 per cent. of duty of 1867, the tax imposed being 90 per cent. of the then existing duty).

March 3, 1883.—Schedule K.—Wool and woolens. All wools, hair of the alpaca, and other like animals, shall be divided, for the purpose of fixing the duties to be charged thereon into the three following classes:

Class one, clothing wools. That is to say, * * * (Same as in 1867).

Class two. Combing wools. That is to say, Leicester, Cotswold, Lincolnshire, down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also all hair of the alpaca, goat and other like animals.

Class three. Carpet wools, and other similar wools. (Same as in 1867.)

October 1, 1890.—All wools, hair of the camel, goat, alpaca, and other like animals shall be divided for the purpose of fixing the duties to be charged thereon into the three following classes:

Class one. That is to say * * * (Same as in 1883.)

Class two. That is to say * * * (Same as in 1883.)

Class three. That is to say, Donskoi, native South American, Cordova, Valparaiso, native

Smyrna, Russian camel's hair, and including all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria, and elsewhere, excepting improved wools hereinafter provided for.

August 27, 1894.—Free list. Par. 685. All wool of the sheep, hair of the camel, goat, alpaca, and other like animals, and all wool and hair on the skin, noils, yarn waste, card waste, bur waste, slubbing waste, roving waste, ring waste, and all waste, or rags composed wholly or in part of wool, all the foregoing not otherwise provided for.

July 24, 1897.—All wools, hair of the camel, goat, alpaca, and other like animals shall be divided, for the purpose of fixing the duties to be charged thereon, into the three following classes:

Class one, that is to say, merino, mestiza, metz, or metis wools, or other wools of Merino blood, immediate or remote, Down clothing wools, and wools of like character with any of the preceding, including Bagdad wool, China lamb's wool, Castel Branco, Adrianople skin wool or butcher's wool, and such as have been heretofore usually imported into the United States * * * and all wools not hereinafter included in classes two and three.

Class two, that is to say, Leicester, Cotswold, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also hair of the camel, Angora goat, alpaca, and other like animals.

Class three, that is to say, Donskoi, native South American, Cordova, Valparaiso, native Smyrna, Russian camel's hair, and all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Syria, and elsewhere, excepting improved wools hereinafter provided for.

August 5, 1909.—360. All wools, hair of the camel, goat, alpaca, and other like animals, shall be divided, for the purpose of fixing the duties to be charged thereon into the three following classes:

361. Class one, that is to say, merino * * *
(Same as in 1897.)

362. Class two, that is to say, Leicester * * *
(Same as in 1897.)

363. Class three, that is to say, Donskoi * * *
(Same as in 1897.)

October 3, 1913.—Free list. Par. 650. Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect.

Nowhere in the century and a quarter gone will you find in its written word, in woolen tariff legislation, anything to indicate that Congress did not fully understand the meaning of its words, or that it did not apply and carefully select them with a view to informing those to whom the law was directed exactly what kind of merchandise they were to deal with. We are not unmindful of the rules invoked by the Government that the intent of the law is the law, and that courts must not impute to the legislature the doing of a ridiculous, vain, or absurd thing. If the words used were susceptible of more than one reasonable construction we would have a different question. For this court to hold that the phrase "commonly known as clothing wool" embraces and includes "combing wool" would be for this court to legislate, and thereby usurp the functions of Congress. From many viewpoints this might be desirable in this case, but it would be embarking upon a very dangerous and un-

certain course, which precedent, if followed, would lead to disastrous consequences. The rule laid down in *Elliott* v. *Swartwout, supra,* in our judgment should be followed, and a strict adherence to this principle, which, for the most part, has been adhered to in the past, will be conducive to the best understanding of and fullest compliance with the purposes of legislation.

If we expect proper respect for laws and a compliance with their provisions; if we hope for a proper understanding in the administration of them, the meaning justified by the words used must not be overthrown by extrinsic circumstances. We hold that when Congress used the phrase "commonly known as clothing wool," it knew that there was a definite kind of wool known to its citizens who were familiar with the question as "clothing wool," and that it must be declared to have intended the ordinary and usual meaning of its words. Clothing wool does not embrace combing wool. Combing wool, and products made therefrom, are the goods in controversy. Combing wool, on date of the entry, was on the free list of the act of 1913. The protests should have been sustained. The judgment of the Board of General Appraisers is *reversed.*

[Rehearing denied February 9, 1921.]

BLAND, Judge: Replying to the Government's brief, on petition for rehearing, importers have conceded, as the Government claims, that Exhibit 15 was not combing wool but was clothing wool. The opinion of this court in this case, we think, is sufficiently clear to indicate how Exhibit 13 should be classified, but to obviate any doubt on the question as to how it should be classified, we find that Exhibit 13 was in fact clothing wool.

Accordingly the judgment heretofore entered by the court is modified so as to affirm the judgment of the Board of General Appraisers with respect to the merchandise represented by Exhibit 13. In all other particulars our former judgment is reaffirmed, and the petition for a rehearing is denied.